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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-363

LORILY MACARANAS
8422 Amigo Avenue #5
Northridge, California 91324

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about November 7, 2005, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Lorily Macaranas (Respondent). On or about October 3, 2005, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on January 27, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 " . . .

17 "(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction.

20 " . . .

21 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a respiratory care
23 practitioner. . . ."

24 8. Section 3750.5 of the Code states:

25 "In addition to any other grounds specified in this chapter, the board may
26 deny, suspend, or revoke the license of any applicant or license holder who has done
27 any of the following:

28 " . . .

1 "(b) Used any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code. . . ."

3 9. Section 3752 of the Code states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere made to a charge of any offense which substantially relates to the
6 qualifications, functions, or duties of a respiratory care practitioner is deemed to be a
7 conviction within the meaning of this article. The board shall order the license
8 suspended or revoked, or may decline to issue a license, when the time for appeal
9 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
10 order granting probation is made suspending the imposition of sentence, irrespective
11 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
12 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
13 the verdict of guilty, or dismissing the accusation, information, or indictment."

14 10. Section 480 of the Code states:

15 "(a) A board may deny a license regulated by this code on the grounds that
16 the applicant has one of the following:

17 "(1) Been convicted of a crime. A conviction within the meaning of this
18 section means a plea or verdict of guilty or a conviction following a plea of nolo
19 contendere. Any action which a board is permitted to take following the
20 establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting
22 probation is made suspending the imposition of sentence, irrespective of a
23 subsequent order under the provisions of Section 1203.4 of the Penal Code.

24 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
25 substantially benefit himself or another, or substantially injure another; or

26 "(3) Done any act which if done by a licentiate of the business or profession
27 in question, would be grounds for suspension or revocation of license.

28 " The board may deny a license pursuant to this subdivision only if the crime

1 or act is substantially related to the qualifications, functions or duties of the business
2 or profession for which application is made.

3 "(b) Notwithstanding any other provision of this code, no person shall be
4 denied a license solely on the basis that he has been convicted of a felony if he has
5 obtained a certificate of rehabilitation under Section 4852.01 and following of the
6 Penal Code or that he has been convicted of a misdemeanor if he has met all
7 applicable requirements of the criteria of rehabilitation developed by the board to
8 evaluate the rehabilitation of a person when considering the denial of a license under
9 subdivision (a) of Section 482. . . ."

10 11. Section 492 of the Code states:

11 "Notwithstanding any other provision of law, successful completion of any
12 diversion program under the Penal Code, or successful completion of an alcohol and
13 drug problem assessment program under Article 5 (commencing with section
14 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
15 agency established under Division 2 ([Healing Arts] commencing with Section 500)
16 of this code, or any initiative act referred to in that division, from taking disciplinary
17 action against a licensee or from denying a license for professional misconduct,
18 notwithstanding that evidence of that misconduct may be recorded in a record
19 pertaining to an arrest."

20 12. California Code of Regulations, Title 16, section 1399.370, states:

21 "For the purposes of denial, suspension, or revocation of a license, a crime or
22 act shall be considered to be substantially related to the qualifications, functions or
23 duties of a respiratory care practitioner, if it evidences present or potential unfitness
24 of a licensee to perform the functions authorized by his or her license or in a manner
25 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
26 include but not be limited to those involving the following:

27 " . . .

28 "(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny. . . ."

1 COST RECOVERY

2 13. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the
4 board, the board or the administrative law judge may direct any practitioner or
5 applicant found to have committed a violation or violations of law to pay to the
6 board a sum not to exceed the costs of the investigation and prosecution of the case."

7 14. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution
9 shall include attorney general or other prosecuting attorney fees, expert witness fees,
10 and other administrative, filing, and service fees."

11 15. Section 3753.1, subdivision (a) of the Code states:

12 "An administrative disciplinary decision imposing terms of probation may
13 include, among other things, a requirement that the licensee-probationer pay the
14 monetary costs associated with monitoring the probation."

15 CONTROLLED SUBSTANCE

16 16. Methamphetamine is a Schedule II controlled substance pursuant to
17 Health and Safety Code Section 11055.

18 FIRST CAUSE FOR DENIAL OF APPLICATION

19 (Conviction of a Crime)

20 17. Respondent's application is subject to denial under Code sections
21 3750, subdivision (d), 3752, and 480, and California Code of Regulations, Title 16, section
22 1399.370, subdivision (b), in conjunction with section 3732, subdivision (b), in that
23 respondent was convicted of a crime substantially related to the qualifications, functions and
24 duties of a respiratory care practitioner. The circumstances are as follows:

25 A. On May 30, 2005, respondent entered a JC Penney store located in
26 Northridge. A security officer who was monitoring the store observed respondent
27 select various fashion jewelry items. Respondent concealed one item in the front
28 pocket of her jeans and two other items inside of a shopping bag. She then walked

1 by registers without paying for the concealed merchandise and exited the store.
2 Two store security officers stopped respondent, escorted her back into the store and
3 placed her under citizen's arrest for theft. Merchandise which included clothing and
4 jewelry were recovered in the amount of \$82.99. The Los Angeles Police
5 Department was notified. When respondent was questioned by a store security
6 officer about why she took the merchandise without paying for it, she stated that her
7 daughter's birthday was coming up and she did not have any money.

8 B. On June 3, 2005, a complaint was filed against respondent in a
9 criminal proceeding entitled *People v. Lorily Ramos Macaranas*, in Superior Court,
10 Los Angeles County, Case No. 5SF02972. Respondent was charged with violating
11 Penal Code section 484(a), theft of property, a misdemeanor (count 1). On August
12 25, 2005, the complaint was amended to add Penal Code section 602(j), trespass,
13 injury to property, a misdemeanor (count 2).

14 C. On August 25, 2005, respondent was convicted upon her plea of nolo
15 contendere to count 2, trespass, injury to property. She was placed on probation for
16 two years. The court ordered her to pay a fine of \$100.00 or serve 3 days in county
17 jail (with credit for 1 day). She was also ordered to pay assessments of \$167.00,
18 additional fines of \$55.00 and restitution of \$100.00. Count 1 of the complaint was
19 dismissed.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

22 18. Respondent's application is subject to denial under section 3750,
23 subdivision (j), in conjunction with section 3732, subdivision (b), in that she committed a
24 fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions,
25 or duties of a respiratory care practitioner. The facts and circumstances set forth in Paragraph
26 17 are incorporated herein by reference.

27 THIRD CAUSE FOR DENIAL OF APPLICATION

28 (Use of a Controlled Substance)

19. Respondent's application is subject to denial under Code section 3750.5, subdivision (b), in conjunction with section 3732, subdivision (b), in that she used the controlled substance methamphetamine. The circumstances are as follows:

A. On January 8, 2001, Los Angeles police officers entered an apartment on Reseda Boulevard to arrest a male who had an outstanding felony warrant. The police officers found a glass pipe and a large plastic spoon both of which contained an off-white substance resembling methamphetamine in the kitchen of the apartment. The officers observed that respondent's pupils were dilated and that she talked in a rapid manner. She spontaneously admitted, "I used today for the first time." Respondent was transported to the police station for a narcotics evaluation. Her symptoms included agitation; rapid, repetitive speech; eye and body tremors; dilated pupils; and an elevated pulse. She was arrested for being under the influence of a central nervous system stimulant.

B. On January 10, 2001, a complaint was filed against respondent in a criminal proceeding entitled *People v. Lorily R. Macaranas*, in Superior Court, Los Angeles County, Case Number 1PN00162, charging her with use/under the influence of a controlled substance, a violation of Health and Safety Code section 11550(a), a misdemeanor.

C. On February 15, 2001, respondent pled guilty to use/under the influence of a controlled substance. The court granted deferred entry of judgment and respondent was placed on diversion for two years. She was ordered to pay a diversion restitution fee of \$100.00 and an administrative fee of \$150.00. She was also ordered to enroll in substance abuse counseling.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Lorily Macaranas for a Respiratory Care Practitioner License:

2. Directing Lorily Macaranas to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: June 6, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant